Simon v. Adzilla, Inc [New Media] et al Doc. 158 Att. 10

EXHIBIT K

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11923-DPW

CONNECTU LLC
Plaintiff

V.

BOSTON, MASSACHUSETTS
MARK ZUCKERBERG, et al **OCTOBER 24, 2006**
Defendants

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE ROBERT B. COLLINGS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	Daniel Tighe, Esquire Griesinger, Tighe & Maffei
	John F. Hornick, Esquire Margaret A. Esquenet, Esquire Meredith Schoenfeld, Esquire Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, N.W. Washington, DC 20001 (202) 408-4000
For the Defendants:	G. Hopkins Guy, III, Esquire I. Neel Chatterjee, Esquire Monte cooper, Esquire Orrick, Herrington & Sutcliffe LLP 1000 March Road Menlo Park, CA 94025 (650) 614-7400

Court Reporter:

Proceedings recorded by digital sound recording, transcript produced by transcription service.

For the Defendants: Jeremy P. Oczek, Esquire

MARYANN V. YOUNG
Certified Court Transcriber
240 Chestnut Street
Wrentham, Massachusetts 02093
(508) 384-2003

Steven Bauer, Esquire
Proskauer Rose, LLP
One International Place
Boston, MA 02110
(617) 526-9600

Q You didn't take any other action to set up the company other than placing the telephone call?
A The Company Corporation assured me that no other action was needed.
Q So it was by virtue of your placement of the telephone call that you ultimately became the sole founding member of ConnectU LLC, correct?
A Yeah, I – it sounds like a legal conclusion or something that I set up a company, I placed a call and, you know, that's what happened.
Q And it's your view that having done so that made you the sole founding member of the company, correct?
A Well, the company was created I guess in my mind before the phone call and the phone call realized it.
Q The company was created in your mind as a result of discussions between you and your brother, Cameron, correct?
A It was my idea to set up the ConnectU LLC--
THE WITNESS: Can I change this mic around a little bit cause, a little bit--
THE COURT: Yeah, you can move it as long as you just keep it close to your mouth--
THE WITNESS: Yeah, all right.
THE COURT: --so that we can hear you.
THE WITNESS: I wasn't sure--
THE COURT: If you want to move it--

THE WITNESS: Yeah, I just--

THE COURT: --from side to side, no problem.

THE WITNESS: --feel like I'm throwing a shovel here.

A It was my intention to set up a company, ConnectU LLC, and I went ahead and did that.

BY MS. HURST:

Q You had discussions with your brother, Cameron, first before doing so, correct?

A I had mentioned that I was, it was, you know, like I said it wasn't a surprise or that, I mean, Cameron knew that I was going to go do that.

Q Who is Mark Pierrat?

A Mark Pierrat is the, I think he's the – well, he worked at Imark and I don't know his title exactly--

THE COURT: I'm sorry, he worked at where?

THE WITNESS: He worked at Imark Company--

THE COURT: Okay.

THE WITNESS: --that programmed ConnectU.com. And he was sort of their business, you know, guy, pick up the phone and deal with the customers.

BY MS. HURST:

Q He was someone that you dealt with at Imark, correct, Mr. Pierrat was?

A I had dealt with Mr. Pierrat, yes.

Q And at the time you placed the telephone call to the

Company Corporation--
A Uh-huh.
Q --or before the entity was formed but at that time period, Harvard Connection was already dealing with Imark and Mr. Pierrat in connection with the website development, correct?
MR. HORNICK: Objection, mischaracterizes.
A Yeah, I would say that--
THE COURT: Oh wait a minute. Hold on. If there’s an objection--
THE WITNESS: Sorry.
THE COURT: --please don’t answer. I overrule the objection and the witness can answer.
THE WITNESS: Okay. Sorry.
A Divya, Cameron and I were dealing with Imark to program our website.
BY MS. HURST:
Q First as Harvard Connection and later as ConnectU.com?
A You could call it that I guess.
Q All right. So on April 6, 2004 when you placed the telephone call to the Company Corporation Mr. Pierrat was known to you?
A Yes, he was.
Q And he was known to your brother, Cameron?
A Yes, he was.
Q And he was known to Mr. Narendra?

A That’s correct.

Q Isn’t it true that you called the Company Corporation as a result of Mr. Pierrat’s recommendation to your brother Cameron that Harvard Connection should form a legal entity?

A I believe that Mr. Pierrat may have made a suggestion but he certainly wasn’t the only person that suggested any type of, you know, formation of a more formal company. And nor do I believe that he was the sole impetus or reason for doing so.

Q But you concede that he did suggest that you form a legal entity to your brother Cameron?

A I believe that I remember that that suggestion happened but by no means do I see it for anything more than a suggestion.

Q Just a suggestion?

A Sure. I mean that’s, that’s what you’re calling it, then that’s what it was.

Q And that suggestion happened the day before you placed the telephone call to the Company Corporation, correct?

A I, I don’t recall. I don’t know.

Q So it’s just a coincidence that Mr. Pierrat suggested to your brother Cameron on the day before you made the telephone call that a legal entity be formed and the next day you went ahead and did that?

MR. HORNICK: Objection. Assumes facts not in evidence, Your Honor.

THE COURT: If that’s the case he may disagree with the statements of fact contained in the question. You may answer.

A The idea to form ConnectU LLC was created well before a day before the actual phone call was placed. For instance, my dad has LLC’s. I’m well aware of what LLC, that sort of people do, and Mr. Pierrat was certainly not the first person to put that idea in my mind or anybody else’s.

Q So you had the idea long before you actually formed the entity?

A It was before a day. I mean, it was something--

Q How--

A What?

Q I’m sorry, I didn’t mean to interrupt.

A It was an idea that didn’t happen a day after?

Q How long before did you have the idea?

A I can’t recall exactly but it was more than a day.

Q Was it a week?

A I would say at least.

Q Was it a month?

A I, maybe.

Q Three months?

A I think that would have been too much. Too long.

Q Was it the launch of TheFaceBook that caused you to think that you would like to form a legal entity?

A That could have definitely added to it.
Q So throughout the period in early 2004 from the launch of TheFaceBook through the founding of ConnectU LLC you had in mind that you would form a legal entity to carry on the business of the website that you were working on; is that correct?
A I had in my many, there’s many things in mind. I looked into trade marking, I looked into formation of a company. That was one of the many things that from, you know, not a incredibly sophisticated business experience, I thought that that was something that I needed to do. And that’s how I was acting. I mean as, you know, a senior in college, I was doing what I thought was right to do and that was one of them.
Q Throughout the period from the launch of TheFaceBook to the launch of the ConnectU, well, pardon me, until the formation of ConnectU LLC, you personally were considering the formation of a legal entity to conduct the business of your website; is that correct?
A I was, I was, you know, I was considering the formation of ConnectU LLC as a formal company to run the website, yes.
Q And you discussed that with your brother during that period of time?
A Definitely mentioned it, yeah.
Q And you discussed it with Mr. Narendra during that period of time as well, didn’t you?

Q Well, let’s take a look at the hearing Exhibit No. 80. And if my colleagues could provide Mr. Narendra the copy of the exhibit number.

(Pause)

BY MR. CHATTERJEE:

Q Do you see that Mr. Winklevoss?

A Yes, No. 8?

Q 8-0.

A Or 8-0, 80. Okay.

Q Is Exhibit No. 80’s a declaration from you?

A Sorry, that’s a question or?

Q Yes.

A You’re asking me if it’s a declaration?

Q Yes.

MR. CHATTERJEE: 80’s a--

A It does not look to be a declaration.

BY MR. CHATTERJEE:

Q Oh. Well let me give you – if you take a look at request for production No. 19.

A Okay.

THE COURT: This is in Exhibit 80 or not?

MR. CHATTERJEE: This is in Exhibit 80, I’m sorry.

THE COURT: Okay.

MR. CHATTERJEE: Mine were organized slightly differently.

THE WITNESS: Okay, so I'm a little confused where to go. I'm looking at 80 right now.

BY MR. CHATTERJEE:

Q If you look at request No. 19--

A Oh, okay.

Q Okay. There's a request in there. This is Exhibit No. 80.

A Okay.

Q Now request for production No. 19 asked you to produce all documents related to current and former directors, officers, employees and agents of ConnectU, including members, managers and board managers as defined in the limited liability company operating agreement of ConnectU LLC. We gave some Bates ranges, Harvard Connect and Winklevoss companies, including documents relating to dates in these positions, duties, authorities and responsibilities. Do you see that?

A Yes, I do.

Q Okay. Now in response to that there was a motion to compel filed, right? Are you aware of that?

A Yes.

Q And following that there was a court order?

A Yes.

Q You know that, right?

A Yes.

Q And in fact in that court order there was a requirement that you produce a declaration that set forth that you had made a complete production in response to that document request, right?

A   Yes.

Q   And Exhibit 83 is that declaration, right?

A   That’s correct, yes.

Q   And you specifically reference in paragraph 19 your response, right? This is the--

A   Yes.

Q   --this is following quarter.

A   Yes.

Q   You did a diligent search. You produced all of the relevant documents that were responsive to that request, right?

A   Yes.

Q   Now, what I’ve done with Exhibit 83, Mr. Winklevoss, is I took all of the documents that were cited there by Bates number. You now what a Bates number is, right?

A   Sort of.

Q   Okay. A Bates number are these actual numbers that are identified on here. You find them typically on the bottom right hand corner of the document.

A   Right.

THE COURT: You know if you’re going to use that would you focus it--

MR. CHATTERJEE: Yes.

THE COURT: --and stop moving it around.

MR. CHATTERJEE: And I’m sorry, Your Honor, this is kind of sliding off.

THE COURT: You’re getting me dizzy.

MR. CHATTERJEE: I apologize.

BY MR. CHATTERJEE:

Q Now, Mr. Winklevoss, with respect to Exhibits 41 – 40, 41 and 42, can you show me where in that collection of documents any of those documents can be found?

A I--

Q Feel free to look through them.

A I don’t know the Bates numbers off the top of my head. Is that what you’re asking me?

Q I’ll represent to you Mr. Winklevoss, I’ve gone--

A Okay.

Q --through each and every one of the Bates numbered documents and I put them in that stack right there. You can look through them and see if you can find Exhibit 40, 41 or 42.

A So you want me to look through the whole binder?

THE COURT: Is there any dispute that these are not contained in there?

MR. HORNICK: Your Honor, these documents that I believe that Mr. Chatterjee is going to be talking about were produced after this discovery request was signed, and we have an agreement in the two cases that any documents from any case can be used in either case. So even if they weren't produced in the California case--

THE COURT: No--

MR. HORNICK: --they can be used.

THE COURT: --no, I just want to know – let him do want he wants to do. Is there any dispute that these are not within that category of documents?

MR. CHATTERJEE: Your Honor, I'll represent to you--

THE COURT: No, I'm asking Mr. Hornick.

MR. CHATTERJEE: Oh.

MR. HORNICK: I don't know, Your Honor. I don't know what these documents here are. I'm not really working on that, I'm not working on that case. I don't know what these documents are just by looking at these numbers.

MR. CHATTERJEE: Your Honor, the premise here is quite simple.

THE COURT: Oh, I understand what you're trying to do. I'm just, rather than having him look through all of them to see if they're there, which might take a little bit of time, and I was trying to shortcut things.

MR. CHATTERJEE: And I'll represent to Your Honor not a single one of them is.

THE COURT: Well, I know, but you don't get – you're not testifying and you're not under oath and you're not going to be testifying, you're not going under oath. So how do you

THE COURT: All right, any objection to that?

MR. HORNICK: No, Your Honor. No objection.

THE COURT: All right, that's admitted.

(Defendant's Exhibit No. 67, admitted)

MR. CHATTERJEE: And then, Your Honor, my understanding is you were going to submit Exhibit 83 which was the declaration with the attached documents. I'd like to offer that into evidence.

THE COURT: All right, wait a minute now. Eighty--

MR. CHATTERJEE: Exhibit 83 was the declaration of ConnectU LLC for all of the documents that were--

THE COURT: Oh right, right, right. Yeah, I'm going to ask that – I'm not going to excuse Mr. Cameron Winklevoss as a witness overnight. He's to go through the documents as Mr. Hornick wished him to do and then to answer the question as to whether they were included in the documents he listed in response to that interrogatory.

MR. CHATTERJEE: Thank you very much, Your Honor.

MR. HORNICK: What documents particularly do you want to know are in there?

MS. HURST: Your Exhibits 40, 41 and 42.

MS. CHATTERJEE: And particularly the handwritten documents that he's relied upon to show membership.

THE COURT: Well wait a minute, wait a minute. We want – is it forty--

MS. HURST: It is, Your Honor, Ms. Hurst--

THE COURT: Let’s get the specific documents you’re referring to. Exhibits--

MS. HURST: Plaintiff’s exhibits 40, 41 and 42--

MS. CHATTERJEE: Correct.

MS. HURST: --which are the two Connecticut registration applications and the bank card.

MR. CHATTERJEE: Correct.

THE COURT: All right, 40, 41 and 42, Mr. Hornick.

MR. HORNICK: And whether they’re in Exhibit 83 is the question?

THE COURT: No, the question is whether they are among the documents listed in that declaration as having been produced.

MR. HORNICK: In 83?

THE COURT: Yeah.

MR. HORNICK: Yes.

THE COURT: It is 83, isn’t it? Mr. Chatterjee--

MR. CHATTERJEE: Yes.

THE COURT: --83?

MR. CHATTERJEE: Yes.

THE COURT: Okay.

MR. HORNICK: Your Honor, we can stipulate that they’re not there.

THE COURT: Well, that's what I was asking you about earlier.

MR. HORNICK: That's what I was saying, they were produced after this was created so they couldn't have been there.

THE COURT: All right. Then we don't have to worry about that. It's stipulated that they're not included in the documents listed in the declaration.

MR. CHATTERJEE: Thank you, Your Honor.

THE COURT: Okay. That takes care of that problem. Okay, questions by counsel for Saverin?

MR. HURST: Yes, briefly, Your Honor.

BY MS. HURST:

Q Good afternoon, Mr. Winklevoss. My name is Annette Hurst, and I'm an attorney for defendant Saverin. I think we've met before, hello.

A Hi.

Q If you could turn to Exhibit 12 in the defendant's exhibit binder.

(Pause)

A Okay.

BY MS. HURST:

Q In or about April 2004 were you familiar with a person named Mark Perot?

A Yes.

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

__________________________ November , 2006

Maryann V. Young